

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KIM EDWARD ROGERS,

Plaintiff,

v.

GAVIN NEWSOME, Governor of  
California, Rob Bonta, Attorney General of  
California,

Defendants.

No. 2:21-cv-2180 KJM DB PS

ORDER

Plaintiff Kim Edward Rogers is proceeding in this action pro se. This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Pending before the court are plaintiff's complaint and motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 1 & 2.) Therein, plaintiff complains about the State of California's Medicaid plan.

The court is required to screen complaints brought by parties proceeding in forma pauperis. See 28 U.S.C. § 1915(e)(2); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Here, plaintiff's complaint is deficient. Accordingly, for the reasons stated below, plaintiff's complaint will be dismissed with leave to amend.

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**I. Plaintiff's Application to Proceed In Forma Pauperis**

Plaintiff's in forma pauperis application makes the financial showing required by 28 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma pauperis status does not complete the inquiry required by the statute. "A district court may deny leave to proceed in forma pauperis at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit." Minetti v. Port of Seattle, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting Tripati v. First Nat. Bank & Trust, 821 F.2d 1368, 1370 (9th Cir. 1987)); see also McGee v. Department of Child Support Services, 584 Fed. Appx. 638 (9th Cir. 2014) ("the district court did not abuse its discretion by denying McGee's request to proceed IFP because it appears from the face of the amended complaint that McGee's action is frivolous or without merit"); Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965) ("It is the duty of the District Court to examine any application for leave to proceed in forma pauperis to determine whether the proposed proceeding has merit and if it appears that the proceeding is without merit, the court is bound to deny a motion seeking leave to proceed in forma pauperis.").

Moreover, the court must dismiss an in forma pauperis case at any time if the allegation of poverty is found to be untrue or if it is determined that the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. See 28 U.S.C. § 1915(e)(2). A complaint is legally frivolous when it lacks an arguable basis in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a complaint as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327; 28 U.S.C. § 1915(e).

To state a claim on which relief may be granted, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as true the material allegations in the complaint and construes the allegations in the light most favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co. v. Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245

(9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

The minimum requirements for a civil complaint in federal court are as follows:

A pleading which sets forth a claim for relief . . . shall contain (1) a short and plain statement of the grounds upon which the court’s jurisdiction depends . . . , (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks.

Fed. R. Civ. P. 8(a).

## **II. Plaintiff’s Complaint**

Here, plaintiff’s complaint fails to contain a short and plain statement of a claim showing that plaintiff is entitled to relief. In this regard, the complaint alleges “that the State of California Medicaid plan violates Medicare and Medicare Acts by limiting payments on behalf of qualified Medicare beneficiaries . . . under Medicare Part B.” (Compl. (ECF No. 1) at 6.) Plaintiff “was forced to withdraw from the Social Security Medicare program in October 2017 due to the costs incurred under the program. (Id. at 7.)

“The Medicaid program, authorized under Title XIX of the Social Security Act, establishes a cooperative federal-state program that finances medical care for people who cannot afford medical services.” Asante v. Azar, 436 F.Supp.3d 215, 220 (D. D.C. 2020) (citing 42 U.S.C. §§ 1396–1396v). “California participates in the Medicaid program through Medi-Cal.” Id. California seeks approval for participation in the Medicaid program from the Secretary of Health and Human Services. See Hoag Memorial Hospital Presbyterian v. Price, 866 F.3d 1072, 1075-76 (9th Cir. 2017).

Here, it is entirely unclear from the complaint’s vague and conclusory allegations exactly how plaintiff’s decision to withdraw from Medicare establishes that California’s Medicaid plan violates the Medicare act. Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a complaint must give the defendant fair notice of the plaintiff’s claims and must allege facts that state the elements of each claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2);

1 Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). “A pleading that offers  
 2 ‘labels and conclusions’ or ‘a formulaic recitation of the elements of cause of action will not do.’  
 3 Nor does a complaint suffice if it tenders ‘naked assertions’ devoid of ‘further factual  
 4 enhancements.’” Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at 555,  
 5 557). A plaintiff must allege with at least some degree of particularity overt acts which the  
 6 defendants engaged in that support the plaintiff’s claims. Jones, 733 F.2d at 649.

## 7 **II. Leave to Amend**

8 For the reasons stated above, plaintiff’s complaint must be dismissed. The undersigned  
 9 has carefully considered whether plaintiff may amend the complaint to state a claim upon which  
 10 relief can be granted. “Valid reasons for denying leave to amend include undue delay, bad faith,  
 11 prejudice, and futility.” California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d  
 12 1466, 1472 (9th Cir. 1988); see also Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau,  
 13 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the  
 14 court does not have to allow futile amendments).

15 However, when evaluating the failure to state a claim, the complaint of a pro se plaintiff  
 16 may be dismissed “only where ‘it appears beyond doubt that the plaintiff can prove no set of facts  
 17 in support of his claim which would entitle him to relief.’” Franklin v. Murphy, 745 F.2d 1221,  
 18 1228 (9th Cir. 1984) (quoting Haines v. Kerner, 404 U.S. 519, 521 (1972)); see also Weilburg v.  
 19 Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007) (“Dismissal of a pro se complaint without leave to  
 20 amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be  
 21 cured by amendment.”) (quoting Schucker v. Rockwood, 846 F.2d 1202, 1203-04 (9th Cir.  
 22 1988)).

23 Here, the undersigned cannot yet say that it appears beyond doubt that leave to amend  
 24 would be futile. Plaintiff’s complaint will therefore be dismissed, and plaintiff will be granted  
 25 leave to file an amended complaint. Plaintiff is cautioned, however, that if plaintiff elects to file  
 26 an amended complaint “the tenet that a court must accept as true all of the allegations contained  
 27 in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause  
 28 of action, supported by mere conclusory statements, do not suffice.” Ashcroft, 556 U.S. at 678.

1 “While legal conclusions can provide the complaint’s framework, they must be supported by  
2 factual allegations.” Id. at 679. Those facts must be sufficient to push the claims “across the line  
3 from conceivable to plausible[.]” Id. at 680 (quoting Twombly, 550 U.S. at 557).

4 Plaintiff is also reminded that the court cannot refer to a prior pleading in order to make an  
5 amended complaint complete. Local Rule 220 requires that any amended complaint be complete  
6 in itself without reference to prior pleadings. The amended complaint will supersede the original  
7 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus, in an amended complaint,  
8 just as if it were the initial complaint filed in the case, each defendant must be listed in the caption  
9 and identified in the body of the complaint, and each claim and the involvement of each  
10 defendant must be sufficiently alleged. Any amended complaint which plaintiff may elect to file  
11 must also include concise but complete factual allegations describing the conduct and events  
12 which underlie plaintiff’s claims.

### 13 CONCLUSION

14 Accordingly, IT IS HEREBY ORDERED that:

15 1. The complaint filed November 24, 2021 (ECF No. 1) is dismissed with leave to  
16 amend.<sup>1</sup>

17 2. Within twenty-eight days from the date of this order, an amended complaint shall be  
18 filed that cures the defects noted in this order and complies with the Federal Rules of Civil  
19 Procedure and the Local Rules of Practice.<sup>2</sup> The amended complaint must bear the case number  
20 assigned to this action and must be titled “Amended Complaint.”

21 3. Failure to comply with this order in a timely manner may result in a recommendation  
22 that this action be dismissed.

23 DATED: April 15, 2022

/s/ DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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25  
26 <sup>1</sup> Plaintiff need not file another application to proceed in forma pauperis at this time unless  
27 plaintiff’s financial condition has improved since the last such application was submitted.

28 <sup>2</sup> Alternatively, if plaintiff no longer wishes to pursue this action plaintiff may file a notice of  
voluntary dismissal of this action pursuant to Rule 41 of the Federal Rules of Civil Procedure.